IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1571 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SURESHBHAI I THAKKAR - Petitioner(s)
Versus
PRESIDING OFFICER (DELETED AS PER HON'BLE COURT'S ORDER) & 1 - Respondent(s)

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Appearance :
MR RS SANJANVALA for Petitioner(s) : 1,
Respondent 1 deleted
MR KM PATEL for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 26/07/2007

ORAL JUDGMENT

Shri R.S. Sanjanwala, learned counsel for the petitioner; Shri K.M. Patel, learned counsel for the respondent.

2. Complaint of the petitioner is that the parties were heard on an application wherein the respondent had prayed for casting a preliminary issue into the maintainability of the Reference and into the status of the petitioner as workman but the Court, instead of casting the issue, decided the matter on merits and rejected the claim. Being confronted with this factual aspect, Shri K.M. Patel, learned counsel for the respondent submits that the order of rejection be set aside, the matter be sent to the Labour Court with a direction to cast an issue and thereafter proceed with the matter in accordance with law. Shri Sanjanwala, learned counsel for the petitioner, however, submits that even if the issue is cast, the same cannot be taken to be a preliminary issue, because, status of a workman can be decided on the strength of the evidence brought on the record.

3. In view of the fair concession made by Shri K.M. Patel, I set aside the award and remand the matter back to the Labour Court with a direction that it shall cast an issue into the status and

entitlement of the workman and into the maintainability of the Reference. On the question whether such issue is required to be decided as a preliminary issue or not, the parties would be free to address their argument before the Labour Court. After hearing the parties, the Labour Court shall decide that whether the issue can be decided without recording evidence or evidence would be needed to decide the issue.

4. The parties present in the Court shall appear before the Labour Court on 30.8.07. The petitioner shall file copy of this order before the Labour Court enabling it to know as to what it is required to do. The Labour Court shall decide the matter finally on merits in accordance with law, preferably within ten months from the date of the appearance of the parties. The petition is allowed to the extent indicated above. Rule is made absolute accordingly. No costs.

[R.S. GARG, J.]

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